



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Joyce v Sunland Waterfront (BVI) Ltd - Taking of evidence from witness overseas by video-link - appeal from interlocutory decision allowed (I, B, C)

Australian Competition & Consumer Commission v Metcash Trading Ltd - *Competition & Consumer Act 2010* (Cth) - proceeding dismissed (B)

Barnett v Territory Insurance Office - s341(1) *Fair Work Act 2009* (Cth) - "workplace instrument" (I)

Thompson v Department of Environment & Conservation (No 2) - Gross sum costs (I, B)

Smith v Brambles Australia Ltd - Personal injuries - duty of care - causation - *Civil Liability Act 2002* (NSW) - indemnity & contribution - *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (I, C)

In the matter of Lawrence Waterhouse Pty Ltd (in liq) - Shaw v Minsden Pty Ltd - *Corporations Act 2001* (Cth) - s37A *Conveyancing Act 1919* (NSW) - contracts - trusts - directors' responsibilities (I, B)



Elite Fleet Pty Ltd v Westpac Banking Corporation - Contracts - interlocutory injunctions - Fleet Services Agreement (B)

Re Keldane Pty Ltd (in liq) - *Corporations Act* 2001 (Cth) - appeal from orders refusing to terminate winding up of company or to validate appointment of the administrators (B)

GRB Investments Pty Ltd v Kempe Enterprises & Anor - Application to set aside statutory demand (B)

Gately v Rockhampton Cab Company Ltd - Restraint of trade (I, B)

Police v Millard - *Road Traffic Act* 1961 (SA) - trailer being towed by respondent's vehicle became detached - expert evidence - appeal dismissed (I, C)

Chatterton v Police - Trespass - criminal law - "place of residence." (B)

Carey v Korda & Winterbottom - Production of documents - legal professional privilege (I, B, C)

Downie and Anor v Jantom Company Pty Ltd & Ors - Joinder - personal injuries - office chair collapse (I)

Porter v Workcover Authority of New South Wales - s151Z *Workers Compensation Act* 1987 (NSW) - plaintiff suing Workcover Authority of New South Wales for money had & received - proceedings dismissed (I)



Summaries with links (5 minute read)

Tuesday 30 August 2011

Joyce v Sunland Waterfront (BVI) Ltd [2011] FCAFC 95

Full Court of the Federal Court of Australia

Keane CJ, Dowsett & Greenwood JJ

Appeal from an interlocutory decision to stay proceedings indefinitely - taking of evidence from witness overseas by video-link - United Arab Emirates - consideration of irrelevant matter - sovereignty & comity - appeal allowed.

[Joyce](#) (I, B, C)

[Sunland Waterfront](#) - decision 19 July 2011

Australian Competition & Consumer Commission v Metcash Trading Ltd [2011] FCA 967

Federal Court of Australia

Emmett J

Competition & Consumer Act 2010 (Cth) - whether proposed acquisition by first respondent from second respondent of all of the shares in the capital of Interfrank Group Holdings Pty Limited (Franklins) would result in a contravention of s50 - answer 'no' - proceeding dismissed.

[ACCC](#) (B)

Barnett v Territory Insurance Office [2011] FCA 968

Federal Court of Australia

Mansfield J

Fair Work Act 2009 (Cth) - whether a contract of employment is a "workplace instrument" for purposes of s341(1) - answer 'no' - proceedings in relation to termination of employment therefore dismissed.

[Barnett](#) (I)



Thompson v Department of Environment & Conservation (No 2) [2011] FCA 970F

Federal Court of Australia

Barker J

Costs - principles applicable to fixing of a gross sum of costs - discount to be applied.

[Thompson](#) (I, B)

[Thompson](#) - decision 3 June 2011: see 'Benchmark' B & IBC Tuesday 14 June 2011 - s237 *Corporations Act 2001* (Cth) - application by applicants to bring derivative action - striking out application - s45 *Competition & Consumer Act 2010* (Cth).

Smith v Brambles Australia Ltd [2011] NSWSC 963

Supreme Court of New South Wales

Schmidt J

Personal injuries - duty of care - causation - *Civil Liability Act 2002* (NSW) - indemnity & contribution - *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - contracts - plaintiff seriously injured while operating crane - part of crane had fallen into Darling Harbour & he had been thrown to ground - shearing of two dowel rods, which were part of a quick release mechanism - modification of crane - five cross-claims - no contributory negligence - damages - preconditions of s151Z(2) *Workers Compensation Act 1987* (NSW) satisfied - extensive consideration of United Kingdom & Australian case law.

[Smith](#) (I, C)

In the matter of Lawrence Waterhouse Pty Ltd (in liq) - Shaw v Minsden Pty Ltd [2011] NSWSC 964

Supreme Court of New South Wales

Ward J

Corporations Act 2001 (Cth) - s37A *Conveyancing Act 1919* (NSW) - contracts - trusts - first plaintiff liquidator of second plaintiff - liquidator seeking to set aside transfer of land at Nelson Bay - fixed & floating charge - equitable compensation - directors' responsibilities - statutory duties - duty to maintain proper financial records - comprehensive consideration of text & United Kingdom & Australian case law.

[Lawrence Waterhouse](#) (I, B)



Elite Fleet Pty Ltd v Westpac Banking Corporation [2011] NSWSC 958

Supreme Court of New South Wales

Brereton J

Contracts - interlocutory injunctions - plaintiff fleet management provider - a number of employees of defendant using cars, have salary sacrifice arrangements managed by plaintiff - Fleet Services Agreement - whether serious question to be tried - defendant restrained from making payments from employee deductions to any person other than plaintiff.

[Elite Fleet](#) (B)

Re Keldane Pty Ltd (in liq) [2011] VSC 385

Supreme Court of Victoria

Pagone J

Corporations Act 2001 (Cth) - appeal from orders refusing to terminate winding up of company or to validate appointment of the administrators - appeal dismissed.

[Keldane](#) (B)

[Keldane](#) - decision 20 July 2011 - application to terminate winding up unsuccessful - no validation of appointment of administrators.

GRB Investments Pty Ltd v Kempe Enterprises & Anor [2011] QSC 253

Supreme Court of Queensland

Martin J

Corporations Act 2001 (Cth) - applicant seeking an order setting aside a statutory demand served on it on two grounds - whether demand defective in that it is not in the prescribed form - secondly, whether there is a genuine dispute - application to set aside statutory demand dismissed.

[GRB Investments](#) (B)

Gately v Rockhampton Cab Company Ltd [2011] QSC 260

Supreme Court of Queensland

Byrne SJA

Restraint of trade - appeal against decision withdrawing personal identification number (PIN) number which had been assigned to plaintiff enable him to use taxi communications network - whether unlawful restraint of trade - procedural unfairness - plaintiff seeking compensation for lost income contending the restraint of trade resulted in compensable unlawful interference with



his employment - damages claim dismissed - declaratory relief granted - defendant's withdrawal of plaintiff's access to defendant's radio & computer booking system & communication facilities via Mobile Data Terminal by withdrawing the plaintiff's personal identification number was an unreasonable restraint of the plaintiff's trade as a taxi driver in Rockhampton & unenforceable.

[Gately](#) (I, B)

[Buckley](#) - decision High Court of Australia 13 December 1971 - respondent professional footballer - appellant the secretary of Balmain District Rugby League Football Club - rules of the League dealing with registration, retention & transfer of players - restraint of trade - injunction & declaratory orders made in Supreme Court & injunction - minor variation in those orders, otherwise appeal dismissed.

Police v Millard [2011] SASC 133

Supreme Court of South Australia

Anderson J

Road Traffic Act 1961 (SA) - police appeal against dismissal of charge for offence of driving without due care contrary to s45 - trailer being towed by respondent's vehicle became detached - trailer went onto the wrong side of the road & collided with motor cyclist who died - prosecution expert evidence - whether magistrate erred in concluding that prosecution case was not proved beyond reasonable doubt - appeal dismissed.

[Police](#) (I, C)

Chatterton v Police [2011] SASC 137

Supreme Court of South Australia

Anderson J

Trespass - criminal law - balcony of first floor apartment - case law considered as to a "place of residence."

[Chatterton](#) (B)

Carey v Korda & Winterbottom [2011] WASC 220

Supreme Court of Western Australia

Edelman J

Production of documents - legal professional privilege - bills of costs from firm of solicitors - schedules of costs incurred by receivers - nature of a receiver's 'agency' relationship with company in receivership - whether a receiver & manager the proper party to assert legal professional privilege - whether there was sufficient evidence to maintain a claim for legal professional privilege - whether the privilege had been waived, or abrogated by statute - defendants' claim to



legal professional privilege upheld - receiver could maintain the privilege & it had not been waived & had not been abrogated.

[Carey](#) (I, B, C)

Downie and Anor v Jantom Company Pty Ltd & Ors [2011] ACTSC 135

Supreme Court of the Australian Capital Territory

Master Harper

Joinder - personal injuries claim that in course of employment by second plaintiff, office chair, manufactured by first defendant & sold by second defendant to second plaintiff, collapsed under first plaintiff - addition of defendant - insurer of existing first defendant company since deregistered - amendment of statement of claim to plead statutory counts against insurer - leave to amend & leave to join additional defendant granted.

[Downie](#) (I)

In the District Court of New South Wales ...

Porter v Workcover Authority of New South Wales [2011] NSWDC 108

District Court of New South Wales

Cogswell SC DCJ

s151Z *Workers Compensation Act 1987* (NSW) - statutory interpretation - *Workers Compensation (Bushfire, Emergency & Rescue Services) Act 1987* (NSW) - *Crown Proceedings Act 1988* (NSW) - plaintiff claiming entitlement to both workers compensation & damages - injury while attending State Emergency Services conference - plaintiff a volunteer with State Emergency Service - plaintiff suing Workcover Authority of New South Wales for money had & received - personal injury claim had settled - proceedings dismissed.

[Porter](#) (I)

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